

REMARKS

1. Claim Rejections – 35 U.S.C. § 102(b)

Claims 1, 2 and 9-11 stand rejected under 35 U.S.C. § 102(b) (“Section 102(b)”) as anticipated by U.S. Pat. No. 1,393,045 to Scott (“Scott”). Claims 12-13 and 15-16 stand rejected under Section 102(b) as anticipated by U.S. Pat. No. 5,620,707 to Sanker (“Sanker”).

An invention is unpatentable under Section 102(b) if “the invention was . . . described in a printed publication . . . more than one year prior to the date of the application for patent in the United States.” A Section 102(b) rejection is only appropriate, however, where the “reference fully discloses in every detail the subject matter of a claim.” See *Application of Foster*, 383 U.S. 966 (1966). For the reasons set forth below, Applicant submits that the references cited by the Examiner do not teach each and every element of the claimed invention, as amended, and thus do not anticipate the present invention.

Applicant’s independent claim 1, as amended, recites a dissolvable flavoring mixture disposed within a capsule, the flavoring mixture comprising “a substantially solid filler having substantially neutral aromatic and gustatory properties, the substantially solid filler being pulverized to form a dissolvable powder.” By limiting the filler to a neutral dissolvable material, the present invention enables virtually unlimited flavor creations depending on a choice of flavoring additive, where the combined mixture is capable of flavoring a variety of food and/or beverage products.

Scott, on the other hand, discloses a soluble concentrated coffee, where liquid coffee is evaporated “to cause a partial or complete drying of the solids . . . with such

suddenness as to prevent escape of the natural aroma, the volatile products of the coffee being held within the solidified product.” Scott, p. 1, ln. 80-88. The coffee concentrate, in desiccated form, may then be contained within a soluble capsule. Scott’s flavoring capsule product is thus simply a concentrated form of the desired end product, inherently incapable of varied gustatory or aromatic properties. In addition, Scott’s concentrated flavoring capsule is limited in application to a cup of coffee. As Scott neither discloses nor suggests a “substantially solid filler material having substantially neutral aromatic and gustatory properties” as presently claimed, and thus capable of varied flavors, aromas, and food product combinations, Scott fails to anticipate the present invention.

Sanker also fails to anticipate the present invention by limiting the disclosure to liquid flavoring in capsule form. Specifically, Sanker teaches beadlets for flavoring a beverage where a flavor is “presolubilized in a liquid form in the core,” and neither discloses nor suggests “a substantially solid filler” as presently claimed. Sanker, col. 5, ln. 57-58. Sanker thus also fails to anticipate the present invention.

As claims 2, 9-11, 13 and 15-16 further depend from otherwise allowable subject matter, such claims are also not anticipated by the cited references.

Accordingly, Applicant respectfully requests withdrawal of the rejections of claims 1, 2, 9-13 and 15-16 under Section 102(b).

2. *Claim Rejections -- 35 U.S.C. § 103(a)*

Claims 3-8, 14 and 17-20 stand rejected under 35 U.S.C. § 103(a) (“Section 103(a)”) as unpatentable over U.S. Pat. No. 1,393,045 to Scott (“Scott”) in view of U.S.

Pat. No. 5,871,798 to Hutchison (“Hutchison”) and U.S. Pat. No. 5,620,707 to Sanker (“Sanker”).

An invention is unpatentable under Section 103(a) “if the differences between the subject matter sought to be patented over the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.”

To establish a *prima facie* case of obviousness, three criteria must be met. “First, there must be some suggestion or motivation . . . to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” MPEP § 2142.

“Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination.” *In re John R. Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992). Any such suggestion must be “found in the prior art, and not based on applicant’s disclosure.” *In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991).

A “clear and particular” showing of the suggestion to combine is required to support an obviousness rejection under Section 103(a). *Id.* As Applicant fails to find mention or suggestion of each claimed limitation, and as one skilled in the art would not be motivated by the cited references to modify or combine the references to produce the present invention, Applicant respectfully submits that the claimed invention is not obvious in view thereof.

Applicant's independent claim 1, as amended, recites a dissolvable flavoring mixture disposed within a capsule, the flavoring mixture comprising "a substantially solid filler having substantially neutral aromatic and gustatory properties, the substantially solid filler being pulverized to form a dissolvable powder." The pulverized powder filler enables the dissolvable flavoring mixture to be quickly and substantially evenly distributed throughout any of a variety of food products including cereals, soups, sauces and beverages. Moreover, as the filler of the present invention has substantially neutral aromatic and gustatory properties, the dissolvable flavoring mixture of the present invention may easily evidence any of a wide variety of flavors or flavor combinations by simply varying the flavoring additive. Applicant finds no mention or suggestion of this limitation in any cited reference, alone or in combination, and thus submits that the present invention is not obvious in view thereof.

As discussed previously with reference to the rejections made under Section 102(b), Scott teaches a process for producing soluble concentrated coffee, where liquid coffee is evaporated "to cause a partial or complete drying of the solids . . . with such suddenness as to prevent escape of the natural aroma, the volatile products of the coffee being held within the solidified product." Scott, p. 1, ln. 80-88. The coffee concentrate, in desiccated, or in some embodiments liquid, form may then be contained within a soluble capsule.

Scott neither discloses nor suggests a "substantially solid filler material having substantially neutral aromatic and gustatory properties" as presently claimed. Indeed, Scott relies on both the aromatic and gustatory qualities of the desiccated coffee filler to produce a coffee product having qualities and "products which are usually lost in the

roasting and cooking processes.” Scott, p. 1, ln. 16-17. By emphasizing the role of the desiccated coffee filler in capturing the aromatic and gustatory qualities of the liquid coffee from which it derives, Scott in fact teaches away from the present invention.

Moreover, one skilled in the art would not be motivated to combine Scott with any secondary reference. Hutchison teaches a method of making a water-based beverage comprising a filler material confined within the capsule in liquid form. Hutchison, Abstract. Likewise, Sanker discloses a beadlet having a flavor and sweetener presolubilized in a liquid form in the core. Sanker, col. 5, ln. 57-58. As both references emphasize the benefits of a liquid filled capsule, one skilled in the art would not be motivated to combine the cited references or to modify the inventions therein to include a substantially solid neutral filler as presently claimed.

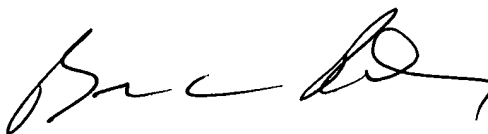
Applicant respectfully submits that the inability of the combined references cited by the Examiner to produce the invention as claimed, and the lack of any suggestion or motivation to modify such art to produce Applicants’ invention as claimed renders the present invention non-obvious in view of such references. As claims 3-8, 14 and 17-20 further depend from otherwise allowable subject matter, Applicant respectfully submits that such claims are also not rendered obvious by the cited references. Accordingly, Applicant respectfully requests withdrawal of the rejections of claims 3-8, 14 and 17-20 under Section 103(a).

CONCLUSION

Applicant submits that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicant requests favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

DATED this 26 day of December, 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brian C. Kunzler', with a stylized, flowing script.

Brian C. Kunzler
Attorney for Applicant
Registration No.

AVN